

WILLIAM M. TENNYSON, JR.

IBLA 75-644

Decided December 12, 1975

Appeal from decision of the Alaska State office, Bureau of Land Management, rejecting Native allotment application AA-7682.

Affirmed.

1. Alaska: Land Grants and Selections: Generally--Alaska: Native Allotments

A selection application, filed by the State of Alaska under its Statehood Act, segregates the land from all appropriations, including those based on settlement and location, when the application is filed. A Native allotment application is properly rejected where it fails to show use and occupancy initiated prior to the filing of the State selection application.

APPEARANCES: Henry W. Cavallera, Esq., Alaska Legal Services Corporation, Dillingham, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

William M. Tennyson, Jr., appeals from a decision of the Alaska State Office, Bureau of Land Management, dated May 5, 1975, rejecting his Native allotment application AA-7682 for the stated reason that the land was not "vacant, unappropriated, and unreserved" public land at the time the appellant initiated his use and occupancy as required by the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed by § 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (Supp. III, 1973).

Appellant's application, signed October 31, 1971, asserts commencement of use and occupancy in June 1964. The State Office determined that the land for which he applied had been segregated

by Alaska State selection application A-054617, filed May 19, 1961. On February 13, 1975, the State Office sent a letter to the appellant notifying him that the land for which he applied is included in State selection application A-054617, filed on May 19, 1961, and was segregated from appropriation on that date. The letter allowed him an additional 60 days in which to provide further evidence in support of his claim, but no response was made.

[1] The regulations provide that land applied for by the State of Alaska will be segregated from all appropriations when the State files its application to select. 43 CFR 2627.4(b). Appellant's failure to show qualifying use or occupancy of the land prior to the filing of a State selection application mandates that his application be rejected. Natalia Wassilliey, 17 IBLA 348 (1974); Helen F. Smith, 15 IBLA 301 (1974).

The State Office also noted that appellant was born on September 23, 1952, and thus would have been too young (approximately 9 years old) to initiate independent use and occupancy of the land at any time prior to the State selection. Arthur C. Nelson (On Reconsideration), 15 IBLA 76 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Frederick Fishman  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

